



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

TECH CENTER 1600/2900

DEC 04 2002

RECEIVED

1617
#6
YC
12110

In Re Application of:

Chudzik et al.

Serial No. 09/901,425

Filed: 9 July 2001

For: MEDICAMENT INCORPORATION
MATRIX

To: Commissioner for Patents
Washington, D.C. 20231

) Art Unit: 1617

) Our Ref. 9896.139.3

I hereby certify that this correspondence is being:

☒ deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231
☐ facsimile transmitted to the Patent and Trademark Office
☐ hand delivered to the Patent and Trademark Office

on this 22 day of November 2002

By

Marilyn E. Thompson

RESPONSE TO RESTRICTION REQUIREMENT

This Response is filed in connection with the Office Action mailed October 22, 2002, the unextended period for response which is set to expire November 22, 2002. The Examiner has required restriction to one of the following inventions under 35 U.S.C. § 121, asserting that the inventions are related as a product and process of use.

- I. Claims 1-40, and 67-74, drawn to a composition; or
- II. Claims 41-66, and 75-78, drawn to a method of making.

In response to the restriction requirement, Applicants provisionally elect Group II (Claims 41-66 and 75-78) with traverse.

Applicant traverses the restriction requirement on the grounds that no serious burden on the Examiner exists. If the search and examination of an entire application can be made without serious burden, it must be examined on the merits even though it includes claims directed to

distinct or independent inventions. M.P.E.P. § 803. The subject matter of Groups I and II are quite sufficiently related that a thorough search for the subject matter of any one group would encompass a search for the subject matter of both groups. To avoid duplicative examination by the Patent Office and unnecessary delay and expense to Applicant, Applicant respectfully requests examination on the merits of all the claims, not just those of Group II.

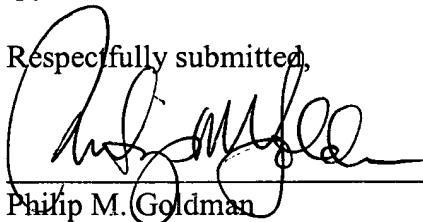
It would appear that the various election of species requirements specify and apply only to claims within non-elected Group I, hence no election of species appears to be required.

Nevertheless, Applicant would traverse the election of species requirement as well. In particular, MPEP 802.02 clearly provides that an election of species requirement is merely a type of restriction requirement. As such, the present Office Actions fails to meet *either* of the two fundamental requirements of *any* restriction requirement, as set forth in MPEP 808, namely, that it provide: (1) reasons why the inventions *as claimed* are either independent or distinct, *and* (2) reasons for insisting on restriction therebetween. Accordingly, the election of species requirement fails to meet the Office's own standards and should be withdrawn. Moreover, the rules (37 CFR 1.141) provide that a reasonable number of species may be included in a single application, where, as here, other conditions are met.

The Commissioner is hereby authorized to charge any additional filing fees required to Deposit Account No. 061910. A duplicate copy of this sheet is enclosed.

Dated: 22 Nov 2002

Respectfully submitted,



Philip M. Goldman
Registration No. 31,162
Fredrikson & Byron, P.A.
4000 Pillsbury Center
200 South Sixth Street
Minneapolis, MN 55402-1425